

**§ 48.4042-1**

**26 CFR Ch. I (4-1-04 Edition)**

from the buyer and has no reason to believe any information in the certificate is false.

(2) *Certificate; in general.* The certificate to be provided by a buyer of CNG is to consist of a statement that is signed under penalties of perjury by a person with authority to bind the buyer, should be in substantially the same form as the model certificate provided in paragraph (c)(4) of this section, and should contain all information necessary to complete the model certificate. A new certificate must be given if any information in the current certificate changes. The certificate may be included as part of any business records normally used to document a sale. The certificate expires on the earliest of the following dates:

- (i) The date one year after the effective date of the certificate (which may be no earlier than the date it is signed).
- (ii) The date a new certificate is provided to the seller.
- (iii) The date the seller is notified by the Internal Revenue Service or the buyer that the buyer's right to provide a certificate has been withdrawn.

(3) *Withdrawal of the right to provide a certificate.* The Internal Revenue Service may withdraw the right of a buyer of CNG to provide a certificate under this paragraph (c) if the buyer uses CNG to which a certificate applies in a taxable use. The Internal Revenue Service may notify any seller to whom the buyer has provided a certificate that the buyer's right to provide a certificate has been withdrawn.

(4) *Model certificate.*

CERTIFICATE OF PERSON BUYING COMPRESSED NATURAL GAS (CNG) FOR A NONTAXABLE USE

(To support tax-free sales of CNG under section 4041 of the Internal Revenue Code.)

\_\_\_\_\_  
Name, address, and employer identification number of seller

\_\_\_\_\_. ("Buyer") certifies the following under penalties of perjury:

The CNG to which this certificate relates will be used in a nontaxable use.

This certificate applies to the following (complete as applicable):

If this is a single purchase certificate, check here \_\_\_\_\_ and enter:

1. Invoice or delivery ticket number \_\_\_\_\_

2. \_\_\_\_\_ (number of MCFs) \_\_\_\_\_

If this is a certificate covering all purchases under a specified account or order number, check here \_\_\_\_\_ and enter:

- 1. Effective date \_\_\_\_\_
- 2. Expiration date \_\_\_\_\_ (period not to exceed 1 year after the effective date)
- 3. Buyer account or order number \_\_\_\_\_

\_\_\_\_\_  
Buyer will not claim a credit or refund under section 6427 of the Internal Revenue Code for any CNG to which this certificate relates.

\_\_\_\_\_  
Buyer will provide a new certificate to the seller if any information in this certificate changes.

\_\_\_\_\_  
Buyer understands that if Buyer violates the terms of this certificate, the Internal Revenue Service may withdraw Buyer's right to provide a certificate.

\_\_\_\_\_  
Buyer has not been notified by the Internal Revenue Service that its right to provide a certificate has been withdrawn. In addition, the Internal Revenue Service has not notified Buyer that the right to provide a certificate has been withdrawn from a purchaser to which Buyer sells CNG tax free.

\_\_\_\_\_  
Buyer understands that the fraudulent use of this certificate may subject Buyer and all parties making any fraudulent use of this certificate to a fine or imprisonment, or both, together with the costs of prosecution.

\_\_\_\_\_  
Printed or typed name of person signing

\_\_\_\_\_  
Title of person signing

\_\_\_\_\_  
Employer identification number

\_\_\_\_\_  
Address of Buyer

\_\_\_\_\_  
Signature and date signed

(d) *Rate of tax.* The rate of the tax imposed under this section is the rate prescribed by section 4041(a)(3).

(e) *Effective date.* This section is effective October 1, 1995.

[T.D. 8609, 60 FR 40082, Aug. 7, 1995; 60 FR 50245, Sept. 28, 1995; T.D. 8659, 61 FR 10453, Mar. 14, 1996; T.D. 8879, 65 FR 17155, Mar. 31, 2000; T.D. 9051, 69 FR 15941 Apr. 2, 2003]

**Subpart G—Fuel Used on Inland Waterways**

SOURCE: T.D. 7536, 43 FR 13516, Mar. 31, 1978, unless otherwise noted.

**§ 48.4042-1 Tax on fuel used in commercial waterway transportation.**

(a) *In general.* Section 4042(a) imposes an excise tax on the use of liquid fuel

in the propulsion system of commercial transportation vessels while traveling on certain inland and intra-coastal waterways (see § 48.4042-1 (f)). The tax applies generally to all types of vessels, including ships, barges, and tugboats. It is in addition to all other taxes imposed on the sale or use of fuel.

(b) *Amount of tax.* For the amount of tax, see section 4042(b).

(c) *Person liable for tax.* The person operating the vessel in which the propulsion fuel is consumed is the user of liquid fuel for purposes of section 4042(a). Thus, a person who operates (or whose employees operate) a vessel is responsible for filing returns and paying the tax. If a vessel owner (or lessee) contracts with an independent contractor to operate the vessel, the independent contractor is the user of liquid fuel for purposes of section 4042(a), regardless of who purchases the fuel.

(d) *Time of use.* Fuel is not taxed by section 4042(a) when put into a vessel's tanks. For purposes of section 4042(a), fuel is used when it is actually consumed by a vessel's engine.

(e) *Liquid fuel.* For purposes of the tax imposed under this section, liquid fuel means any liquid fuel including gasoline, diesel fuel, special motor fuel, or Bunker C residual fuel oil.

(f) *Commercial waterway transportation*—(1) *In general.* For purposes of section 4042(a) and § 48.4042-2(c)(1), the term "commercial waterway transportation" means the use of a vessel on the waterways specified in paragraphs (g) (1) through (27) of this section if:

(i) Use of the vessel is in the business of transporting property for compensation or hire, or

(ii) Use of the vessel is in transporting property in the business of the owner, lessee, or operator of the vessel (whether or not a fee is charged).

Except for the operation of certain fishing vessels, the operation of all vessels satisfying the requirements of paragraph (f)(1)(i) or (1)(ii) of this section will be deemed "commercial waterway transportation," regardless of whether the vessel is actually engaged in the transportation of property on a particular voyage. Thus, "commercial waterway transportation" includes the operation of vessels while moving

empty of cargo, while awaiting passage through locks, while dislodging vessels grounded on a sandbar, while moving to or from a repair facility, while maneuvering around loading and unloading docks, and while fleeting barges into a single tow.

(2) *Fishing vessels exception.* A vessel does not transport property in the business of the owner, lessee, or operator, for purposes of paragraph (f)(1)(ii) of this section, by merely transporting fish or other aquatic animal life caught on the voyage. The tax imposed by section 4042(a) does not apply to fuel used by a fishing vessel while traveling to a fishing site, while engaged in fishing, or while returning from the fishing site with its catch. However, the tax applies to fuel used by a commercial vessel along the taxable waterways while traveling to pick up aquatic animal life caught by another vessel and while transporting the catch of such other vessel.

(g) *Specified waterways.* Only fuel used on those waterways specified in section 206 of the Inland Waterways Revenue Act of 1978 (specified waterways) is taxable. The specified waterways are as follows:

(1) Alabama-Coosa Rivers: From junction with the Tombigbee River at river mile (hereinafter referred to as RM) 0 to junction with the Coosa River at RM 314.

(2) Allegheny River: From confluence with the Monongahela River to form the Ohio River at RM 0 to the head of the existing project at East Brady, Pennsylvania, RM 72.

(3) Apalachicola-Chattahoochee and Flint Rivers: Apalachicola River from mouth at Apalachicola Bay (intersection with the Gulf Intracoastal Waterway) RM 0 to junction with Chattahoochee and Flint Rivers at RM 107.8. Chattahoochee River from junction with Apalachicola and Flint Rivers at RM 0 to Columbus, Georgia, at RM 155 and Flint River, from junction with Apalachicola and Chattahoochee Rivers at RM 0 to Bainbridge, Georgia, at RM 28.

(4) Arkansas River (McClellan-Kerr Arkansas River Navigation System): From junction with Mississippi River at RM 0 to port of Catoosa, Oklahoma, at RM 448.2.

(5) Atchafalaya River: From RM 0 at its intersection with the Gulf Intracoastal Waterway at Morgan City, Louisiana, upstream to junction with Red River at RM 116.8.

(6) Atlantic Intracoastal Waterway (A.I.W.W.): Two inland water routes approximately paralleling the Atlantic coast between Norfolk, Virginia, and Miami, Florida, for 1,192 miles via both the Albermarle and Chesapeake Canal and Great Dismal Swamp Canal routes. For vessels traveling along the A.I.W.W. no matter how short the distance, the A.I.W.W. includes the main channel, all alternate channels, and all adjoining bays and sounds, regardless of depth. However, vessels merely crossing the A.I.W.W. on route either to a coastal port or to a nonspecified waterway will not be treated as traveling on the A.I.W.W.

(7) Black Warrior-Tombigbee-Mobile Rivers: Black Warrior River System from RM 2.9, Mobile River (at Chickasaw Creek) to confluence with Tombigbee River at RM 45. Tombigbee River (to Demopolis at RM 215.4) to port of Birmingham, RM's 374-411 and upstream to head of navigation on Mulberry Fork (RM 429.6), Locust Fork (RM 407.8), and Sipsey Fork (RM 430.4).

(8) Columbia River (Columbia-Snake Rivers Inland Waterways): From The Dalles at RM 191.5 to Pasco, Washington (McNary Pool), at RM 330, Snake River from RM 0 at the mouth to RM 231.5 at Johnson Bar Landing, Idaho.

(9) Cumberland River: Junction with Ohio River at RM 0 to head of navigation, upstream to Carthage, Tennessee, at RM 313.5.

(10) Green and Barren Rivers: Green River from junction with the Ohio River at RM 0 to head of navigation at RM 149.1.

(11) Gulf Intracoastal Waterway (G.I.W.W.): From the mouth of St. Mark's River, Florida, to Brownsville, Texas, 1,134.5 miles. For vessels traveling along the G.I.W.W. no matter how short the distance, the G.I.W.W. includes the main channel, all alternate channels, and all adjoining bays and sounds, regardless of depth. However, vessels merely crossing the G.I.W.W. on route either to a coastal port or to a

nonspecified waterway will not be treated as traveling on the G.I.W.W.

(12) Illinois Waterway: Illinois River from junction with the Mississippi River at RM 0 to the Des Plaines River and along the Des Plaines River to Lockport Lock and Dam at RM 291. Chicago Sanitary and Ship Canal from Lockport Lock and Dam at RM 291 to the South Branch Chicago River and along the South Branch Chicago River to Lake Street, Chicago at RM 325.5 near Chicago Harbor. Calumet-Sag Channel from junction with the Chicago Sanitary and Ship Canal to the Little Calumet River and along the Little Calumet and Calumet Rivers to turning basin 5, near the entrance to Lake Calumet, an additional 23.8 RMS. Total waterway distance approximately 350 RMS.

(13) Kanawha River: From junction with Ohio River at RM 0 to RM 90.6 at Deepwater, West Virginia.

(14) Kaskaskia River: From junction with the Mississippi River at RM 0 to RM 36.2 at Fayetteville, Illinois.

(15) Kentucky River: From junction with Ohio River at RM 0 to confluence of Middle and North Forks at RM 258.6.

(16) Lower Mississippi River: From Baton Rouge, Louisiana, RM 233.9 to Cairo, Illinois, RM 953.8.

(17) Upper Mississippi River: From Cairo, Illinois, RM 953.8 to Minneapolis, Minnesota, RM 1,811.4.

(18) Missouri River: From junction with Mississippi River at RM 0 to Sioux City, Iowa, at RM 734.8.

(19) Monongahela River: From junction with Allegheny River to form the Ohio River at RM 0 to junction of the Tygart and West Fork Rivers, Fairmont, West Virginia, at RM 128.7.

(20) Ohio River: From junction with the Mississippi River at RM 0 to junction of the Allegheny and Monongahela Rivers at Pittsburgh, Pennsylvania, at RM 981.

(21) Ouachita-Black Rivers: From the mouth of the Black River at its junction with the Red River at RM 0 to RM 351 at Camden, Arkansas.

(22) Pearl River: From junction of West Pearl River with the Rigolets at RM 0 to Bogalusa, Louisiana, RM 58.

(23) Red River: From RM 0 to the mouth of Cypress Bayou at RM 236.

(24) Tennessee River: From junction with Ohio River at RM 0 to confluence with Holstein and French Rivers at RM 652.

(25) Tennessee-Tombigbee Waterway: From its confluence with the Tennessee River to the Warrior River at Demopolis, Alabama.

(26) White River: From RM 9.8 to RM 255 at Newport, Arkansas.

(27) Willamette River: From RM 21 upstream of Portland, Oregon, to Harrisburg, Oregon, at RM 194.

[T.D. 7727, 45 FR 70861, Oct. 27, 1980. Redesignated by T.D. 8066, 51 FR 14, Jan. 2, 1986, as amended by T.D. 8659, 61 FR 10453, Mar. 14, 1996]

#### § 48.4042-2 Special rules.

(a) *Dual use of liquid fuels*—(1) *Dual use by the propulsion engine*. The tax imposed by section 4042(a) applies to all taxable liquid used as a fuel in the propulsion system of the vessel, regardless of whether the engine (or other propulsion system) is used for a purpose other than propulsion of the vessel. For purposes of this section, any engines generating movement of a vessel (including bow thrusters used for steering) are part of the propulsion system. The tax does not apply to fuel consumed in engines which are not used to generate movement of a vessel. When the propulsion engine operates special equipment by means of a power take-off or power transfer, the tax applies to all liquid fuel consumed by that engine. For example, the tax applies to all fuel used in the engine operating an alternator, a generator, or pumps, if that engine is used to generate movement of a vessel.

(2) *Common tank*. If the liquid fuel consumed by a nonpropulsion engine is drawn from the same tank as fuel consumed by a propulsion engine, a reasonable determination of the quantity of fuel used in such a separate engine will be acceptable for purposes of excluding from taxation a portion of the fuel consumed by the vessel. The determination of the amount of fuel consumed by the nonpropulsion engine may be based primarily on the operating experience of the person using the fuel; however, in order to exclude fuel from taxation under the rule set out in this paragraph (a)(2), the tax-

payer must maintain records which will support the allocation used.

(b) *Voyages crossing boundaries of the specified waterways*. Fuel consumed by a vessel traveling along the specified waterways is taxable only to the extent of fuel consumed for propulsion while on the specified waterways. Generally, the operator may calculate the amount of fuel consumed while on the specified waterways during a particular voyage by multiplying total fuel consumed in the propulsion engine by a fraction. The numerator of the fraction is the time spent operating on the specified waterways; the denominator is the total time spent operating on the specified and nonspecified waterways during the voyage. This calculation may not be used when it is unreasonable. It may be determined to be unreasonable by:

(1) Better evidence of fuel consumed (*e.g.*, readings from an accurate fuel gauge or records from similar voyages); or

(2) The existence of factors causing a substantial discrepancy between the rate of fuel consumption on the specified and nonspecified waterways.

(c) *Records required*. (1) All operators of vessels used in commercial waterway transportation must maintain records sufficient to establish to the satisfaction of the district director the amount of fuel used for taxable purposes. Those records may include, when relevant to establish liability:

(i) Quantity of fuel and date of acquisition of all liquid fuels acquired for both taxable and nontaxable purposes, whether delivered to storage tanks or tanks on a vessel;

(ii) Date and quantity of fuel pumped into tanks on each vessel;

(iii) Identification number or name of each vessel using fuel; and

(iv) Departure time, departure point, route traveled, destination, and arrival time for each vessel.

(2) Vessel operators seeking a tax exemption provided by section 4042(c) must maintain records which will support any exemption claimed. Where applicable, the records shall contain:

(i) The draft of the vessel on each voyage (for exemption under section 4042(c)(1));